Filed 12/29/04 McDonnell v. McBride CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

JOHN MCDONNELL, Plaintiff and Respondent, v. JAMES MCBRIDE et al., Defendants and Appellants.	H026775 (Santa Clara County Super. Ct. No. CV 798589)

Plaintiff and respondent John McDonnell sued defendants and appellants James and Lillie McBride (the McBrides) to recover delinquent attorney fees. The trial court overruled the McBrides' demurrer to McDonnell's complaint. McDonnell subsequently obtained a default judgment against the McBrides.

Business and Professions Code section 6148, subdivision (a)[1] provides that any contract for attorney's services in excess of $1,000 must be in writing. The principal issue on appeal is whether the parties' oral agreement for attorney fees was enforceable under the exception stated in subdivision (d)(2) of section 6148, which provides that the requirement of a written contract does not apply to fee agreements that are "implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client." We conclude that the complaint alleged sufficient facts that

[1] All further statutory references are to the Business and Professions Code unless otherwise stated.

brought the agreement under the exception stated in section 6148, subdivision (d)(2) and that the trial court therefore did not err when it overruled the McBrides' demurrer to the complaint. Finding no error, we shall affirm the judgment.

FACTS AND PROCEDURAL HISTORY

I. Prior Litigation

In the early 1990's, the McBrides sued three real state brokers and a potential buyer of a rental property they owned in Patterson, California for breach of contract, fraud, and other torts (hereafter the real estate action). Attorneys Armand Estrada, William Thomson, and their law firm, Estrada and Thomson, (hereafter collectively E & T) represented the McBrides in the real estate action.

Subsequently, E & T sued the McBrides to recover delinquent attorney fees arising out of the prosecution of the real estate action. The McBrides cross-complained against E & T for legal malpractice, breach of fiduciary duty, and fraud (hereafter the malpractice action).[2] Initially, the McBrides represented themselves in the malpractice action. After the trial court sustained E & T's demurrer to the McBrides' cross-complaint without leave to amend, the McBrides filed an appeal (A080187).

[2] On our own motion, we have taken judicial notice of the First District Court of Appeal's unpublished decision in *McBride v. Estrada* (A095029 & A095939, opinion filed December 20, 2002 and modified January 13, 2003) for background information regarding the malpractice action. According to the opinion, E & T filed their complaint in November 1995 in the municipal court of Alameda County (Case No. C-29682-7). In February 1997, the McBrides filed a complaint in the superior court against E & T alleging legal malpractice and fraud (Case No. V-013051-8). They also obtained leave of court to file a cross-complaint asserting corresponding claims in E & T's municipal court action. The entire case was transferred to the superior court, consolidated with case number V-013051-8, and given a new case number (Case No. V-013561-0).

II. McDonnell's Representation of the McBrides in Malpractice Action

In 1997, the McBrides retained attorney John McDonnell to assist them in the malpractice action. The McBrides continued to represent themselves in the malpractice action but occasionally consulted with McDonnell. In early 1998, the McBrides retained McDonnell to handle the appeal in the malpractice action and McDonnell formally appeared as counsel of record on the appeal.

The McBrides' appeal was successful; the appellate court reversed the trial court order sustaining the demurrer without leave to amend (A080187). The case was returned to the trial court for further proceedings in about March 1999. The McBrides subsequently represented themselves in the prosecution of the malpractice action in the trial court. However, during that time, they occasionally requested legal advice from McDonnell.

In about October 2000, the McBrides asked McDonnell to represent them at the trial of the malpractice action against E & T. McDonnell substituted in as counsel of record in November 2000. The case was tried between February 13, 2001, and February 23, 2001. The jury returned special verdicts for E & T on all issues except the legal malpractice claims but made factual findings that the legal malpractice claims were barred by the statute of limitations. Judgment was entered in favor of E & T in March 2001.

After the trial, the McBrides asked McDonnell to file post-trial motions, including a motion for new trial, a memorandum of costs, a motion for attorney fees, and opposition to E & T's memorandum of costs.

III. Fee Dispute Between McBrides and McDonnell

On or about March 23, 2001, the McBrides challenged McDonnell's bill for legal services and costs through the end of February 2001. At that time, the bill exceeded $75,000. On March 23, 2001, McDonnell offered to reduce his hourly billing rate for the

services performed in January 2001 by $30 per hour and to perform the services required for the post-trial motions from March 23, 2001 forward at no charge if the McBrides agreed to pay for the services through March 22, 2001, in full. James McBride agreed to this proposal on behalf of the McBrides.

Between March 23, 2001, and May 2001, McDonnell performed in excess of 60 hours worth of legal services for the McBrides at no charge. McDonnell estimated the dollar value of those services as "at least $15,000." McDonnell also reduced his January 2001 bill by $3,903 to reflect the change in his hourly billing rate. Between March 23, 2001, and May 2001, the McBrides paid McDonnell $1,700. The McBrides terminated McDonnell's services in early May 2001. At that time, in accordance with the terms of their March 2001 agreement, the McBrides still owed McDonnell $74,565.45.

IV. McDonnell's Action to Collect Attorneys Fees and Costs

A. Initial Pleadings

On May 24, 2001, McDonnell filed a complaint against the McBrides for the unpaid attorney fees and costs in Santa Clara County superior court. His verified complaint alleged causes of action for breach of contract and fraud and a common count for money owed.

In August 2001, McDonnell obtained entry of default against the McBrides after they failed to respond to the complaint after service of process. In September 2001, McDonnell obtained a default judgment against the McBrides for $90,041.

The McBrides moved to quash service of summons and for relief from the entry of default and the default judgment on the ground that the summons and complaint were not properly served. McDonnell opposed the motion. The trial court granted the motion and set aside the defaults.

B. The McBrides' Demurrer

After the defaults were set aside, the complaint was properly served. In March 2002, the McBrides filed a demurrer to the complaint on the grounds that it failed to state a cause of action because McDonnell had failed to plead the existence of a valid written contract between an attorney and his or her clients as required by section 6148. They argued that section 6148 provided that since there was no written fee agreement, any agreement between the parties was voidable by the McBrides. They also claimed the cause of action for common count and money owed failed because McDonnell had failed to attach copies of his bills or other evidence of the amount owed to the complaint.

McDonnell opposed the demurrer, arguing that this case fell within the exception stated in section 6148, subdivision (d)(2) because the services at issue were "of the same general kind as previously rendered to and paid for by the client." (§ 6148, subd. (d)(2).) McDonnell also argued that even if an oral fee contract is voided, the attorney may still collect a reasonable fee pursuant to subdivision (c) of section 6148. The trial court overruled the demurrer.

C. The McBrides' Failure to Answer and Entry of Default

The court's written order did not specify a due date for the McBrides' answer, but at the time of the April 23, 2002 hearing on the demurrer, the trial court expressly provided 30 days to answer. The McBrides did not file an answer to the complaint. Instead, on May 23, 2002, the McBrides filed a motion to strike several portions of the complaint that they asserted were irrelevant, false, or improper.

McDonnell responded to the motion to strike by advising the McBrides in a letter dated May 30, 2002, that the motion was untimely and improper because Code of Civil Procedure section 472a, subdivision (b), provides that an answer must be filed after a demurrer is overruled. McDonnell also stated that the motion to strike was improper because, where a party intends to file both a demurrer and motion to strike, the two

motions must be filed and heard at the same time, pursuant to rule 329 of the California Rules of Court. McDonnell further advised the McBrides that if they did not withdraw the motion to strike and file an answer by June 7, 2002, he would file an ex parte motion to dispose of the motion to strike and take their default.

The McBrides did not file an answer by June 20, 2002. On June 20, 2002, McDonnell faxed a letter in which he advised the McBrides that he intended to make an ex parte application for entry of default on June 21, 2002, due to the McBrides' failure to file an answer. McDonnell also stated that he would not seek entry of default if the McBrides filed a verified answer on June 20, 2002.

The McBrides responded in a letter to McDonnell, also faxed on June 20, 2002, that they disagreed that their motion to strike was improper. The McBrides' letter stated, "We have filed our Motion within the 'time to respond' to your Complaint. On the merits, portions of your complaint should be stricken. It is our belief and understanding that our Motion is timely and proper. The issues raised in our Motion to Strike were not raised on demurrer and have not been litigated." After the McBrides refused to withdraw their motion to strike and file an answer, McDonnell brought an ex parte motion for entry of default. Default was entered on June 21, 2002. On July 24, 2002, the court denied the McBrides' motion to strike as moot.

D. Motion for Relief From Entry of Default and Writ Review of Order on Motion

In August 2002, the McBrides filed a motion for relief from entry of default pursuant to Code of Civil Procedure section 473, subdivision (b). They argued that they were entitled to relief on the ground of mistake of law because they were not aware that they were required to file a motion to strike at the same time as their demurrer. Additionally, the McBrides asserted that their motion to strike should be heard because several defects in McDonnell's verified complaint had to be remedied before they could file a verified answer.

McDonnell filed opposition to the motion. He argued that the McBrides had not made an excusable mistake of law for several reasons. First, McDonnell expressly warned the McBrides in writing that their motion to strike was improper and that a timely answer must be filed to avoid entry of default. Second, it is well established that a mistake of law caused by failure to research readily ascertainable law is not an excusable mistake justifying relief from default. Third, McDonnell asserted that the McBrides, who were experienced at self-representation, intentionally disregarded his advice and chose not to file an answer.

The trial court granted the motion for relief from default. During the hearing on the motion, the court indicated that it agreed with the McBrides that their mistake of law in filing a motion to strike instead of an answer after their demurrer was overruled was an excusable mistake that justified relief from entry of default.

McDonnell sought review of the order by filing a petition for a writ of mandate directing the trial court to vacate its order and to enter a new order denying the motion. We issued an order to show cause why the requested relief should not be granted and issued a temporary stay of the trial court proceedings while our writ review was pending. In an unpublished opinion (H025216), we concluded that the trial court had abused its discretion in granting the McBrides' motion for relief from entry of default and issued a peremptory writ of mandate directing the trial court to vacate its previous order and to enter a new order denying the McBrides' motion.

E. Default Judgment

In September 2003, the court entered a default judgment in favor of McDonnell in the amount of $108,523.08. The default judgment included the damages requested in the complaint after credits for amounts garnished ($89,565.45), prejudgment interest ($17,462.40), plus costs ($1,495.23). On appeal from the default judgment, the McBrides challenge the court's order overruling their demurrer.

DISCUSSION

The McBrides contend the trial court erred when it overruled their demurrer on each of the causes of action in McDonnell's complaint. They also contend that the court improperly granted McDonnell a writ of attachment.

A. Standard of Review

"[A]n order overruling a demurrer is not directly appealable but may be reviewed on an appeal from the final judgment . . . ." (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 912-913.) "The standard of review for an order overruling a demurrer is de novo. The reviewing court accepts as true all facts properly pleaded in the complaint in order to determine whether the demurrer should be overruled. [Citation.]" (*Casterson v. Superior Court* (2002) 101 Cal.App.4th 177, 182-183.)

The McBrides attacked each of the causes of action in the complaint with a general demurrer on the grounds that McDonnell's causes of action for breach of contract and fraud and the common count did not state facts sufficient to constitute a cause of action. "The rules by which the sufficiency of a complaint is tested against a general demurrer are well settled." (*Quelimane Co. v. Stewart Title Guaranty Co*. (1998) 19 Cal.4th 26, 38 (*Quelimane*).) The appellate court treats the demurrer as admitting all material facts properly pleaded and gives the complaint a reasonable interpretation, reading it as a whole and its parts in their context. (*Ibid.*)

"If the complaint states a cause of action under any theory, regardless of the title under which the *factual* basis for relief is stated, that aspect of the complaint is good against a demurrer. '[The court is] not limited to plaintiffs' theory of recovery in testing the sufficiency of their complaint against a demurrer, but instead must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. The courts of this state have . . . departed from holding a plaintiff strictly to the

"form of action" he has pleaded and instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained.' [Citations.]" (*Quelimane, supra*, 19 Cal.4th at pp. 38-39.) "If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be granted. [Citation.]" (*Id.* at p. 39.)

B. Section 6148 and McDonnell's Contract Cause of Action

The parties did not have a written fee agreement. The McBrides argue that McDonnell's failure to plead a valid written contract bars McDonnell from recovering fees on a contract theory. The McBrides rely on section 6148, which sets forth the requirements for attorney fees contracts that are not contingency fees contracts. Subdivision (a) of section 6148 provides in relevant part: "In any case not coming within Section 6147[3] in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars ($1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following: [¶] (1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case. [¶] (2) The general nature of the legal services to be provided to the client. [¶] (3) The respective responsibilities of the attorney and the client as to the performance of the contract."

Subdivision (b) of section 6148 sets forth requirements for an attorney's billing statements in cases that do not involve contingency fee contracts.[4]

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[3] Section 6147 sets forth requirements relating to contingency fee contracts.

[4] Section 6148, subdivision (b) provides: "All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include

Subdivision (c) of section 6148 provides: "Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee." The McBrides contend that since they did not have a written fee agreement with McDonnell, any oral agreement they may have had regarding fees is voidable at their option.

McDonnell contends that subdivision (c) of section 6148 does not apply, since this case falls within the exception set forth in subdivision (d)(2) of the statute, which provides: "This section shall not apply to any of the following: [¶] (2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client."

McDonnell's complaint alleged that he began performing unspecified legal services for the McBrides in 1997 during the time that they represented themselves in the malpractice action. The complaint also alleged that in 1998, he represented them in the first appeal in the malpractice action (A080187). The complaint alleged, "The agreement between [McDonnell] and the [McBrides] was that [McDonnell] would bill the [McBrides] for legal services on an hourly basis at [McDonnell's] customary rate, and the [McBrides] would pay the bill within 15 days of presentation. [McDonnell] and the [McBrides] also agreed that the [McBrides] would pay for all costs of the case."

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the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated."

The complaint also alleged that McDonnell was successful on the appeal and that the McBrides represented themselves after the case was returned to the trial court in March 1999 until about November of 2000, when McDonnell became counsel of record in the trial court for the purpose of trying the malpractice action. The complaint also asserted that McDonnell continued to provide the McBrides with legal advice during the time that they represented themselves in the trial court.

According to the complaint, after McDonnell agreed to represent the McBrides at trial, the agreement between the parties regarding fees "continued to be that [McDonnell] would bill the [McBrides] for legal services on an hourly basis at his customary rate, and the [McBrides] would pay the bill within 15 days of presentation. The [parties] also continued the agreement that the [McBrides] would pay for all costs of the case." The complaint alleged that McDonnell "performed extensive legal services for the [McBrides] in the year 2000 and through May 2001."

With regard to payments made by the McBrides, the complaint asserted (1) that the McBrides "fully paid all of [McDonnell's] invoices for fees and costs through the end [*sic*] December 2000;" (2) that in February 2001, the McBrides made a partial payment on the bill for services rendered in January 2001; and (3) that in April 2001, the McBrides paid $1,700 toward the outstanding bill for services rendered between January 2001 and March 2001.

In our view, these allegations were sufficient to bring this case within the exception in section 6148, subdivision (d)(2) because McDonnell adequately alleged that the fees for the unpaid services "are of the same general kind as previously rendered to and paid for by the client." First, all of the services outlined in the complaint relate to McDonnell's representation of the McBrides in the same lawsuit, the malpractice action against E & T. The complaint alleged that McDonnell represented the McBrides as counsel of record during two separate periods of time: (1) between 1998 and March 1999 for work done on the first appeal and (2) from November 2000 until May 2001, providing

services before, during, and after the trial. It also alleged that McDonnell provided consulting services to the McBrides in the malpractice action during those periods of time that he was not formally counsel of record.

Second, the complaint alleged that the McBrides paid for all of the services McDonnell rendered on the appeal as well as the consulting service he provided up to the end of December 2000. In addition, the complaint alleges that the McBrides paid McDonnell for a portion of the services he rendered as trial counsel. McDonnell substituted in as counsel of record in November 2000, three months before trial. The complaint alleged that McDonnell's bill for services through the end of December 2000 was paid in full. It also alleged the McBrides made partial payments on services rendered in January 2001.

The McBrides argue that the complaint fails because McDonnell has not expressly pleaded that the unpaid services were "of the same general kind" as the services for which they paid because appellate work is not the same as trial work. However, as we have noted, McDonnell's complaint did not have to use the exact words from section 6148, subdivision (d)(2) in order to bring this matter within the exception stated therein, as long as the factual allegations of the complaint were sufficient to trigger the exception. As noted previously, all of the services rendered related to McDonnell's representation of the McBrides in the same action for legal malpractice. In our view, that met the statutory requirement that the services paid for be of the "of the same general kind" as the unpaid services. The McBrides' argument also ignores the fact that they had also paid for some of the services McDonnell rendered as trial counsel.

The McBrides assert that the complaint had to identify the fee that was charged for the previous services and that the unpaid fee had to be the same as the fees that had been paid for section 6148, subdivision (d)(2) to apply. They argue that the complaint fails because McDonnell has not pleaded "what the 'fee' is for the appellate services or trial services." While the complaint does not identify the total amount of the fee for the

appellate work, it does plead that the McBrides agreed to pay McDonnell's customary hourly fee during both periods of representation and that the McBrides paid the bills for the appellate services in full.

The McBrides suggest that in order for the exception in section 6148, subdivision (d)(2) to apply the total amount of the fees for the trial services had to be the same as the fees for the appellate services. They also argue that the exception only applies to fixed fee or flat fee billing systems. We find no merit in these contentions. Section 6148 expressly states that it applies to all kinds of fee agreements, "including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges." (§ 6148, subd. (a)(1).) The only exception is contingency fee agreements, which are subject to section 6147. (§§ 6147; 6148, subd. (a).) Moreover, nothing in subdivision (d)(2) of the statute limits its application to flat fee or fixed fee agreements.

The McBrides also contend the complaint fails because McDonnell failed to attach copies of his bills to the complaint. Since the complaint adequately pleads facts that bring this case within the exception in section 6148, subdivision (d)(2) and sufficient facts regarding the basic nature of the agreement and the amounts paid by the McBrides to withstand demurrer, we conclude it was not necessary for McDonnell to attach copies of his bills to the complaint.

The McBrides observe that the total amount claimed by McDonnell included both attorney fees and costs and argue that the exception in section 6148, subdivision (d)(2) only applies to the fee portion of his bill and not the costs, since section 6148, subdivision (d)(2) refers to "the fee" and does not mention costs. According to the complaint, McDonnell's oral agreements with the McBrides for both the appellate and the trial services included promises that the McBrides would pay for all costs of suit. In addition, the McBrides paid for all of McDonnell's services, including the costs of suit, through December 2000. In discussing the requirements for a written fee contract, section 6148 mentions "other . . . charges applicable to the case." (§ 6148, subd. (a)(1).) In setting

forth the requirements for an attorney's bills, section 6148 provides that the "cost and expense portion of the bill" shall clearly identify the nature and amount of the costs and expenses incurred. (§ 6148, subd. (b).) Since the statute addresses both the fee and cost components of an attorney's bill, it would be anomalous to conclude that the exception stated in subdivision (d)(2) only applies to the fee portion of an enforceable oral contract.

The McBrides also argue that the trial court erred in overruling the demurrer because McDonnell billed some of his time at a rate of $220 per hour and some of his time at a rate of $250 per hour. Although the McBrides make this observation in their brief, they do not develop the point with reasoned argument or citation to authority, as they are required to do on appeal. We shall therefore deem the point waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) This point also relies on information that was not in the complaint and that was not the subject of a request for judicial notice and is therefore inapplicable to our review of the court's ruling on the demurrer. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

For these reasons, we concluded that the trial court did not err when it overruled the McBrides' demurrer to McDonnell's cause of action for breach of contract.

C. Cause of Action for Fraud

The McBrides argue that McDonnell cannot state a cause of action for fraud because he did not plead a valid written contract. They do not cite any legal authority in support of that proposition. The elements of a cause of action for fraud include: (1) a misrepresentation (a false representation, concealment, or nondisclosure); (2) knowledge of the falsity of the misrepresentation; (3) an intent to defraud or induce reliance; (4) justifiable reliance; and (5) resulting damage. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974.) Fraud is a tort. The plaintiff need not prove the existence of a contract in order to state a cause of action for fraud. The fraud cause of action in McDonnell's complaint pleaded all of the elements of a cause of action for

fraud. We therefore conclude that the trial court did not err when it overruled the McBrides' demurer to the fraud cause of action.

D. Common Count

Citing *Rose v. Ames* (1942) 53 Cal.App.2d 583 (*Rose*), the McBrides argue: "[I]t is proper to sustain a demurrer to a common count if plaintiff is relying on the same set of facts." The trial court in *Rose* sustained a demurrer to a four-count complaint without leave to amend. On appeal, the appellate court concluded that the complaint was insufficient to state causes of action for breach of contract, specific performance, and fraud. (*Id.* at pp. 588-589.) The court then turned to the question of the adequacy of the complaint to state a common count for money had and received. The court concluded that the defendant's demurrer to the common count was also properly sustained. The court explained "It is the established law of California that, if plaintiff is not entitled to recover under one count in a complaint, where all the facts upon which his demand is based are specifically pleaded, it is proper to sustain a demurrer to a common count set forth in the complaint, the recovery under which is obviously based on the set of facts specifically pleaded in the other count." (*Id.* at p. 589.) Since the common count relied on facts specifically pleaded in the other three counts to which demurrers had been sustained, the court concluded that the demurrer to the common count was also properly sustained. (*Ibid.*) The rule from *Rose* has no application here, since we have concluded that the complaint properly stated causes of action for breach of contract and fraud.

Moreover, "In California, it has long been settled the allegation of claims using common counts is good against special or general demurrers. [Citation.] The only essential allegations of a common count are '(1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment.' [Citation.]" (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.) McDonnell's complaint adequately pleaded all of these elements.

For these reasons, we conclude that the trial court did not err when it overruled the McBrides' demurrer to the common count.

E. Writ of Attachment

At two points in their brief, the McBrides make the bald assertion that the court erred in granting a writ of attachment. This point is not supported by any argument or citation to authority. A fundamental rule of appellate review is that the appealed judgment or order is presumed to be correct. (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2004) ¶ 8:15, pp. 8-4 to 8-5.) The appellant has the burden of overcoming the presumption of correctness by providing this court with reasoned argument and legal authority on each point raised. (*Id*. at ¶¶ 8:17, 8:17.1, pp. 8-5 to 8-6.) "This requires more than simply stating a bare assertion that the judgment . . . is erroneous and leaving it to the appellate court to figure out why; it is not the appellate court's role to construct theories or arguments that would undermine the judgment and defeat the presumption of correctness." (*Id*. at ¶ 8:17.1, p. 8-5.) When an appellant asserts a point but fails to support it with reasoned argument and citation to authority, as is the case here, we may treat the point as waived. (*Ibid*., citing *People v. Stanley, supra,* 10 Cal.4th at p. 793.)

DISPOSITION

The judgment is affirmed.

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McAdams, J.

WE CONCUR:

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Elia, Acting P.J.

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Bamattre-Manoukian, J.